IN THE CIRCUIT COURT OF MARYLAND
FOR PRINCE GEORGE'S COUNTY

FRANCIS E. CANALES-PERDOMO		
a/k/a Jose Antonio Clement Rodriguez,	*	
Petitioner	*	
	*	
v.	*	**Civil Case No. _____**
	*	
	*	
STATE OF MARYLAND,	*	
Respondent	*	

* *

PETITION FOR WRIT OF ERROR CORAM NOBIS
AND REQUEST FOR AN EXPEDITED HEARING

Petitioner Francis E. Canales-Perdomo, through counsel, James Wyda, Federal Public Defender for the District of Maryland, and Michael T. CitaraManis, Assistant Federal Public Defender, asks this Court to issue a writ of error coram nobis vacating his conviction in Case No. CA005652J in the Circuit Court for Prince George's County, in which petitioner was prosecuted under an alias, Jose Antonio Clement Rodriguez. Mr. Canales-Perdomo also requests an expedited hearing on this matter.

Factual and Procedural Background

On January 4, 2001, in the Circuit Court for Prince George's County, in Case No. CA005652J, Francis E. Canales-Perdomo, prosecuted under an alias, Jose Antonio Clement Rodriguez, pleaded guilty to second-degree assault, in violation of Article 27, § 12A. On the same date, the Honorable Vincent Femia, Circuit Court Judge, sentenced Mr. Canales-Perdomo to 90 days incarceration with 90 days credit for time already spent in custody. [1]

Mr. Canales-Perdomo did not file an appeal, nor did he file a petition for writ of habeas corpus or a petition under the Post Conviction Procedure Act .

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[1] The Circuit Court's docket entries for January 4, 2001, are attached as **Exhibit A**.

Mr. Canales-Perdomo is scheduled to be sentenced in United States District Court for the District of Maryland on April 22, 2003, on a charge of reentering or remaining in the United States after being ordered deported, in violation of 8 U.S.C. § 1362. At that time, Mr. Canales-Perdomo's sentence will be determined pursuant to the federal Sentencing Guidelines. Affecting Mr. Canales-Perdomo's sentence will be his criminal history.

Under the federal Sentencing Guidelines, a criminal history Category is determined for a defendant by assessing points for each prior conviction and adding these points up. *See* U.S.S.G. § 4A1.1, *et seq*. For Mr. Canales-Perdomo's second-degree assault conviction, he will receive two criminal history points because the sentence was for more than 60 days jail. According to the findings of a United States Probation Officer in Mr. Canales-Perdomo's presentence report, Mr. Canales-Perdomo will also be assessed points as a result of convictions for theft and false statement to a police officer.

As a result, Canales-Perdomo will be placed in a criminal history Category IV. Without the two points for the second-degree assault conviction, Mr. Canales-Perdomo would be placed in a lower category, Category III.

The difference is that with the second-degree assault conviction being counted, Mr. Canales-Perdomo faces a sentence of imprisonment of 57-71 months, and without the second-degree assault conviction being counted, Mr. Canales-Perdomo faces a sentence of 46-57 months imprisonment. Basically, with the assault conviction being counted, Mr. Canales-Perdomo faces a mandatory minimum 57 months imprisonment, and without it, he has the opportunity to receive a sentence approximately one year less and no more than 57 months imprisonment.

Argument

I. A Petition Writ of Error Coram Nobis is the Proper Vehicle for Relief.

Mr. Canales-Perdomo properly seeks relief in the form of a writ of error coram nobis pursuant to *Skok v. State*, 361 Md. 52, 78 (2001). In that case, the Court of Appeals significantly expanded the scope of coram nobis relief:

> [T]here should be a remedy for a convicted person who is not incarcerated and not on parole or probation who is suddenly faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional or fundamental grounds. Such person should be able to file a motion for coram nobis relief regardless of whether the alleged infirmity in the conviction is an error of fact or an error of law.

Id.

Mr. Canales-Perdomo is not incarcerated on the second-degree assault conviction at issue and is not on parole or probation from this conviction. Thus, he cannot challenge his conviction by a petition for writ of habeas corpus or a petition under the Post Conviction Procedure Act. *Id*. at 77.

However, Mr. Canales-Perdomo faces significant collateral consequences at his upcoming federal sentencing from the second-degree assault conviction. As explained above, the conviction automatically increases the amount of incarceration required under the federal Sentencing Guidelines. A writ of error coram nobis is thus proper. *See State v. Hicks*, 139 Md. App. 1, 8-9 (2001) (holding that a possible increase in a pending federal sentencing as a result of state conviction was a "significant collateral consequence" for which coram nobis relief was appropriate).

Mr. Canales-Perdomo legitimately challenges his conviction on fundamental or constitutional grounds. As argued more fully below, the Circuit Court erred in accepting Mr. Canales-Perdomo's plea of guilty without ensuring that it was knowing and voluntary pursuant to the principles of *Boykin v. Alabama*, 395 U.S. 238 (1969) and Maryland Rule 4-242(c). *Skok*, 351 Md. at 80-81

("[T]he scope of a coram nobis proceeding encompasses issues concerning the voluntariness of a guilty or nolo contendere plea, and whether the record shows that such a plea was understandingly and voluntarily made under the principles of *Boykin v. Alabama* . . . ."); *id.* at 81 ("[T]he courts have regularly held that violations of rules similar to Maryland Rule 4-242, which are designed to insure that guilty and nolo contendere pleas are voluntary, constitute a basis for coram nobis relief.").

II. Mr. Canales-Perdomo's guilty plea was not knowing or voluntary.

The Circuit Court erred in accepting Mr. Canales-Perdomo's plea of guilty since the examination on the record did not demonstrate that he was pleading knowingly and voluntarily as required by the principles of *Boykin*, 395 U.S. 238, and Maryland Rule 4-242(c)(1).

A transcript of the proceedings in Circuit Court on January 4, 2001, is not yet available but has been ordered. However, undersigned counsel has reviewed a video-tape of Mr. Canales-Perdomo's guilty plea and the plea colloquy consists (in substance) of the following:

Court: "What is your plea to second-degree assault?"

Defense counsel (after conferring with petitioner): "Guilty."

Court: "Found guilty." (After which sentence was pronounced.)

A court must determine and the record must affirmatively demonstrate that the defendant entered a guilty plea voluntarily and understandingly. *Boykin*, 395 U.S. at 242-43. When a plea of guilty is entered in a state criminal trial, several federal constitutional rights are involved: (1) the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment, (2) the right to trial by jury, and (3) the right to confront one's accusers. *Id.* at 243. As the Supreme Court made clear in *Boykin*, "[W]e cannot presume of waiver of these three important federal constitutional rights from a silent record." *Id.; see Metheny v. State*, 359 Md. 576, 598 n. 14 (2000) (enumerating

other fundamental rights waived by a guilty plea including (1) the right to insist that the prosecution prove its case beyond a reasonable doubt, (2) the right to present witness and testify on one's behalf, and (3) the right to a speedy and public trial).

In Mr. Canales-Perdomo's second-degree assault case, the record is devoid of any evidence or finding that his guilty plea was voluntary and understandingly made; there is no mention of any constitutional rights or affirmative waiver of those rights; and there is no personal plea of guilty by Mr. Canales-Perdomo or acknowledgment of facts by him which would support a finding of guilt by the Court.

This Court cannot presume a waiver of rights from the record that exists here and as a result, the guilty plea is invalid. *Boykin*, 395 U.S. at 243; *see Hicks*, 139 Md. App. at 11 ("Evidence that appellant was not advised as to the burden of proof, the standard of proof, or the presumption of innocence was sufficient evidence to support a lack of voluntariness finding.").

In accordance with the principles of *Boykin*, Maryland Rule 4-242(c) also imposes a duty upon the court to establish on the record that a defendant's plea is knowing and voluntary. Rule 4-242(c) provides, in pertinent part:

> (c) **Plea of guilty.** The court may accept a plea of guilty only after it determines, upon an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea.

"Voluntariness" generally refers to whether the plea is free from coercion, threats or inducements. *See State v. Brazle*, 296 Md. 375, 383-84 (1983). With respect to the "nature of the charge," Rule 4-242(c) "contemplates that the court will explain to the accused, in understandable terms, the nature of the offense to afford him a basic understanding of its essential substance . . . ."

State v. Priet, 289 Md. 267, 287-88 (1981). To understand the "consequences of the plea," a defendant must be informed on the record of the maximum sentence to which he is being subjected. *Bryant v. State*, 47 Md. App. 551, 555 (1981).

In Mr. Canales-Perdomo's case, the record does not establish that his plea was free from coercion, threats, or inducements; the record is devoid of any explanation of the nature of the offense set forth in Article 27 § 12A, other than the reference to "second-degree assault"; and Mr. Canales-Perdomo was not informed on the record of the most basic consequence of his plea – the maximum sentence he faced.

Other than asking what his plea was (to which counsel for Mr. Canales-Perdomo responded), the Court conducted no examination. As a result, the court failed to comply with Rule 4-242(c), and for this reason too, Mr. Canales-Perdomo's guilty plea is void.

III. An Expedited Hearing is Necessary.

Where, as here, a petitioner establishes that coram nobis is an appropriate avenue for relief, he is entitled to a hearing. *See Skok*, 361 Md. at 82. In light of his pending federal sentencing on April 22, 2003, Mr. Canales-Perdomo requests an expedited hearing and decision on this petition.

Without an expedited hearing and decision, Mr. Canales-Perdomo's sentence will be increased by the conviction in the second-degree assault case, causing him to serve a period of incarceration beyond what is otherwise necessary and appropriate. If this Court grants Mr. Canales-Perdomo relief prior to his April 22, 2003, sentencing hearing by vacating his conviction in the second-degree assault case, the United States District Court will not assign him two points for the second-degree assault case, and as a result, he will receive an appropriate sentence of imprisonment of 46-57 months. In order to avoid the additional period of unnecessary incarceration, Mr. Canales-

Perdomo respectfully requests that the hearing and decision on this petition be scheduled prior to April 22, 2003.

Respectfully submitted,

James Wyda
Federal Public Defender for the
District of Maryland

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STATE OF MARYLAND,	*	
Respondent	*	

* *

ORDER FOR AN EXPEDITED HEARING

This Court, having considered the foregoing Petition for Writ of Error Coram Nobis and Request for an Expedited Hearing, it is this ___ day of April 2003,

ORDERED that an expedited hearing in the above captioned case be scheduled by the Clerk's Office prior to April 22, 2003.

_____
JUDGE OF THE CIRCUIT COURT

IN THE CIRCUIT COURT OF MARYLAND
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a/k/a Jose Antonio Clement Rodriguez,	*	
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* *

ORDER GRANTING PETITION FOR WRIT OF ERROR CORAM NOBIS

This Court, having considered the foregoing Petition for Writ of Error Coram Nobis, it is this ___ day of April 2003,

ORDERED that Petitioner's Petition for Writ of Error Coram Nobis is **GRANTED** and Petitioner's conviction in Case No. CA005652J in the Circuit Court for Prince George's County, *State of Maryland v. Jose Antonio Clement Rodriguez*, is hereby **VACATED**.

_____
JUDGE OF THE CIRCUIT COURT

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of April 2003, a copy of the foregoing Petition for Writ of Error Coram Nobis and Request for an Expedited Hearing was hand-delivered to the office of Angela Beasely, Assistant State's Attorney, Office of the State's Attorney for Prince George's County, Courthouse, 14735 Main Street, Room 349M, Upper Marlboro, MD 20772.

_____
Michael T. CitaraManis
Assistant Federal Public Defender